

Vermont Agency of Education
Best Practices for Schools Regarding Transgender and Gender Nonconforming Students

State Policy: It is the policy of the State of Vermont that all Vermont educational institutions provide safe, orderly, civil, and positive learning environments. Harassment, hazing and bullying have no place and will not be tolerated in Vermont schools. No Vermont student should feel threatened or be discriminated against while enrolled in a Vermont school. 16 V.S.A. § 570.

State Law: An owner or operator of a place of public accommodation or an agent or employee of such owner or operator shall not, because of race, creed, color, national origin, marital status, sex, sexual orientation, or gender identity of any person, refuse, withhold from, or deny to that person any of the accommodations, advantages, facilities, and privileges of the place of public accommodation. 9 V.S.A. § 4502(a).

Background: Many questions arise for students and school staff when considering the best supports for transgender and gender nonconforming students. These sample procedures are designed to provide direction for schools to address issues that may arise concerning the needs of transgender and gender nonconforming students. Recent U.S. Department of Education (USDE) Office for Civil Rights (OCR) guidance and resolution agreements state that Title IX protects all students at recipient institutions from sex discrimination, including transgender students and students who do not conform to gender stereotypes. All students need a safe and supportive school environment to progress academically and developmentally. Administrators, faculty, staff, and students each play an important part in creating and sustaining that environment. Schools should be proactive in creating a school culture that respects and values all students and fosters understanding of gender identity within the school community. These practices are intended to help school and district administrators take steps to create a culture in which transgender and gender nonconforming students feel safe, supported, and fully included, and to meet each school's obligation to provide equal educational opportunities for all students. These practices are intended to help schools ensure a safe learning environment free of discrimination and harassment, and to promote the educational

and social integration of transgender students. These procedures do not anticipate every situation that may occur and the needs of each student must be assessed on a case-by-case basis. Every student and school is unique and building administrators should discuss these issues with students and their families and draw on the experiences and expertise of their colleagues as well as external resources where appropriate.

School Climate and Transgender or Gender Nonconforming Students

A national survey conducted in 2013 found that 74.1% of lesbian, gay, bisexual and transgender (LGBT) students reported having been verbally harassed in the previous year, 36.2% physically harassed, and 16.5% physically assaulted.¹ A different national survey in 2011 found that 51% of respondents who were harassed or bullied in school reported attempting suicide, compared with 1.6% of the general population.²

The procedures are based on the following core principles of educational access and equity for all students:

- i. All students have a gender identity which is self-determined.
- ii. All persons, including students attending school, have privacy rights.
- iii. All students have a right to feel safe at school.
- iv. All students have a right to a school environment free from discrimination.

Best Practices require schools to adopt a student-centered focus regarding transgender and gender nonconforming students. No single policy, approach, or accommodation will apply in all circumstances. Schools must determine supports for transgender and gender nonconforming students on a case-by-case basis, informed by the individual student's needs.

¹ GLSEN, 2013 *National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual and Transgender Youth in Our Nation's Schools*, xvii (2014).

² Jaime M. Grant, et al., National Center for Transgender Equality and National Gay and Lesbian Task Force, *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*, 3, 45 (2011).

Definitions:

- “Cisgender” refers to a person whose gender identity corresponds to their assigned sex at birth.
- “Gender Identity” means an individual’s actual or perceived gender identity, or gender-related characteristics intrinsically related to an individual’s gender or gender-identity, regardless of the individual’s assigned sex at birth.³
- “Gender expression” refers to the way a person expresses gender to others in ways that are socially defined as either masculine or feminine, such as through behavior, clothing, hairstyles, activities, voice, mannerisms or body characteristics.
- “Gender nonconforming” or “gender creative” people are those whose gender-related identity and/or gender expression do not conform to the social expectations or norms for a person of that sex assigned at birth. Other terms that can have similar meanings include gender variant, gender expansive, gender fluid, or gender atypical.
- “Gender stereotypes” refers to stereotypical notions of masculinity and femininity, including expectations of how boys or girls represent or communicate one’s gender to others, such as behavior, clothing, hairstyles, activities, voice, mannerisms, or body characteristics.
- “Transgender” is a term which describes an individual whose gender identity or gender expression is different from the individual’s assigned sex at birth.
- “Gender transition” refers to the experience by which a transgender person goes from living and identifying as one’s assigned sex to living and identifying as the sex consistent with one’s gender identity. A gender transition often includes a “social transition,” during which an individual begins to live and identify as the sex consistent with the individual’s gender identity, with or without medical treatments or procedures. [“Transition” refers to the process by which a person socially and/or physically aligns their

³ 1 V.S.A. §144, Gender identity defined.

gender expression more closely to their gender identity and away from that associated with their assigned sex at birth.]⁴

- “Sexual Orientation” refers to a person’s emotional and sexual attraction to other people based on the gender of the other person. Sexual orientation is not the same as gender identity. Not all transgender students identify as gay, lesbian or bisexual, and not all gay, lesbian and bisexual students display gender nonconforming characteristics.⁵

Discrimination/Harassment

Harassment of a student on the basis of sex can limit or deny a student from participating in or receiving educational benefits, services or opportunities. Under Title IX, discrimination that is a result of harassment that is sexual in nature and/or gender-based is prohibited. Gender-based harassment may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex stereotyping. For example, harassing a student for failing to conform to stereotypical masculine or feminine notions or behaviors constitutes sex discrimination.

Interpretation of recent OCR enforcement of Title IX and its regulations, demonstrates that once a school district has notice of possible harassment between students, it is responsible for investigating to determine the actions that occurred and for responding appropriately. The district is not responsible for the actions of the harassing student, but instead it is responsible for its own discrimination for failing to respond adequately. A school district may violate Title IX and the regulations if:

- 1) the harassing conduct is sufficiently serious to deny or limit the student’s ability to participate in or benefit from the educational program;
- 2) the district knew or reasonably should have known about the harassment; and
- 3) the district failed to take appropriate responsible action.

Significantly, these steps are the district’s responsibility whether or not the harassed student makes a complaint or asks the district to take other actions. Once the district

⁴ State of New York Policy Guidance, 2015

⁵ Id. (citing California School Board Association, *Policy Brief: Providing a Safe, Nondiscriminatory School Environment for Transgender and Gender-Nonconforming Students*, 1 (2014)).

knows, or reasonably should know of possible harassment, it must take immediate and appropriate steps to investigate or otherwise determine what occurred, using procedures and standards similar to those used in all complaints involving sex-based harassment. If an investigation reveals that the harassment created a hostile environment, the district must take prompt and effective steps reasonably calculated to end the harassment and hostile environment, prevent its recurrence, and remedy its effects, as appropriate.

OCR's Title IX Resource Guide instructs the Title IX coordinator to coordinate the recipient's⁶ efforts of accepting and adequately responding to all complaints of sex discrimination and work to prevent sexual and gender-based harassment. The Title IX resource guide also provides the following responsibilities of a Title IX coordinator in relation to harassment:

- 1) The Title IX coordinator should assist in any training the recipient provides to the school community, including all employees, as to what conduct constitutes sexual and gender-based harassment and how to respond appropriately if it occurs.
- 2) The Title IX coordinator should help the recipient develop a method appropriate for their institution to survey the school climate, evaluate discriminatory attitudes in the school culture, and determine whether any harassment or other problematic behaviors are occurring, where they happen, which students are responsible, which students are targeted, and how those conditions may be remedied.
- 3) Generally, the Title IX coordinator is in the best position to evaluate confidentiality requests from complainants in the context of providing a safe, nondiscriminatory environment for all students because he/she must have knowledge of all Title IX reports and complaints at the entity.
- 4) The Title IX coordinator should coordinate recordkeeping (e.g., confidential complaint log), monitor incidents to help identify students or employees who have multiple complaints filed against them or who have been repeated targets, and address any patterns or systemic problems that arise, including making school officials aware of these patterns as appropriate.
- 5) When necessary, the Title IX coordinator should recommend that the recipient increase safety measures, such as monitoring, supervision, or security at locations or activities where harassment has occurred.
- 6) The Title IX coordinator should regularly review the effectiveness of the

⁶ Public schools are recipients for Title IX purposes.

recipient's efforts to ensure that the institution is free from sexual and gender-based harassment, and use that information to recommend future proactive steps that the recipient can take to comply with Title IX and protect the school community.

Compliance with the aforementioned will assist school districts in prohibiting the unlawful harassment of students based on a person's actual or perceived transgender status, gender nonconformity or gender identity. Complaints alleging discrimination or harassment based on a person's actual or perceived transgender status, gender identity or gender nonconformity should be handled in accordance with the guidance set forth above and in accordance with the Policy on the Prevention of Harassment, Hazing and Bullying of Students.

Privacy

Except as set forth herein, school personnel should not disclose information that may reveal a student's transgender or gender nonconforming status. Under the Family Educational Rights and Privacy Act (FERPA), only those school employees with a legitimate educational need should have access to a student's records or the information contained within those records. Disclosing confidential student information to other employees, students, parents, or other third parties may violate privacy laws, including but not limited to FERPA. Transgender or gender nonconforming students have the ability, as do all students, to discuss and express their gender identity and gender expression openly and decide when, with whom, and how much of their private information to share with others.

Schools should work closely with the student and family, if appropriate, in devising an appropriate plan regarding the confidentiality of the student's transgender or gender nonconforming status that works for both the student and the school. The support of the student's family may vary. In adopting a student-centered approach, a school can best support a transgender student by involving the student regarding how and what information about the student is shared within the school and between the school and the student's home. Some parents may be very supportive in advocating for the student with the school. In other situations, students may feel more comfortable expressing their gender identity at school and may not have a supportive home environment. In those cases, schools should develop a plan for information sharing which supports the student, while balancing a parent's right to

information. Any plan for sharing information must comply with all applicable laws, regulations, policies and guidelines. Privacy considerations may also vary with the age of the student.

In some cases, transgender and gender nonconforming students may feel more supported and safe if other students are aware of their gender identity. In these cases, school staff should work closely with the student, families and other staff members on a plan to inform and educate the student's peers. It may also be appropriate to engage external resources to assist with educational efforts.

A list of additional resources and information can be found at the end of this document, including contact information for Outright Vermont (a local support organization) and the Vermont Human Rights Commission, which investigates claims of discrimination under Vermont's anti-discrimination laws.

Official Records

For grades 9-12, the transcripts of all students must be permanently maintained; academic records may be permanently maintained. See State Board of Education Rule 2113.

To the extent that the school is not legally required to use a student's legal name or sex assigned at birth on school records and other documents, the school should use the name and gender preferred by the student. This may require the school to maintain two sets of records (one with the student's legal name and sex assigned at birth kept separate from routine school records) to avoid inadvertent disclosure.

With respect to student medical records, school nurses and other licensed professionals need accurate and reliable information in order to ensure that the student receives appropriate care and to enable them to coordinate care with other health providers or licensed professionals, as well as to file health insurance claims with other organizations such as Medicaid. Nurses are required to accurately document clinical information relating to a patient and are also required to keep patient health records confidential. In the case of a transgender student, a school nurse should use the student's chosen/preferred name, and should use the student's birth name only when necessary to ensure the student receives appropriate care and to enable the school nurse to coordinate care for the student with other health care

providers or licensed professionals, as well as to file health insurance claims.

Under FERPA, students who are 18 and older or parents of students under 18 may request a change to the student's name and gender in educational records based on a claim that such records are incorrect, misleading or a violation of privacy. A student's permanent pupil record should be changed to reflect a change in legal name or gender only upon receipt of documentation that such legal name and/or gender have been changed pursuant to applicable law.

For a legal change of gender, the student must provide a birth certificate indicating the student's legal gender. 18 V.S.A. § 5112 (2011).

In all cases, in order to ensure that records accurately reflect circumstances in effect at the time each record was made, that record can be cross-referenced, and in order to maintain the confidentiality of the student's transgender status to the extent possible, the former name and/or gender will be maintained in archived data in the AOE's central database.

Names/Pronouns

Students should be addressed by school staff by the name and pronoun corresponding to their gender identity. Students are not required to obtain a court ordered name and/or gender change or to change their pupil personnel records as a prerequisite to being addressed by the name and pronoun that corresponds to their gender identity. To the extent possible and consistent with these guidelines, school personnel should make efforts to maintain the confidentiality of the student's transgender status. For those students who undergo gender transition while attending the same school, it is important to develop a plan for initiating use of the preferred name and pronouns consistent with the student's gender identity. The plan can also include when and how this is communicated to students and their parents, staff and other individuals within the school community (i.e., substitute teachers, bus drivers, athletic coaches, etc.).

Within the school or school district when a transgender or gender nonconforming student new to a school is using a chosen/preferred name and gender identity, their birth name and assigned sex should be kept confidential by school and district staff. If a student has previously been known at school or in school records by his or her birth name, the school administrator should direct school personnel to use the

student's chosen/preferred name and not the student's birth name. To ensure consistency among teachers, school administrators, substitute teachers and other staff, every effort should be made to immediately update student education records (for example, attendance records, report cards, Individualized Education Programs, etc.) with the student's chosen/preferred name and appropriate gender markers and not circulate records with the student's birth name and assigned sex.

Student ID cards should be issued in the name that reflects a student's gender identity.

Sports and Physical Education

Pursuant to USDE OCR guidance on Title IX and Single-Sex Elementary and Secondary Classes and Extracurricular Activities, transgender and gender nonconforming students generally must be treated consistently with their gender identity in all aspects of the planning, implementation, enrollment, operation, and evaluation of single-sex classes.⁷ Transgender and gender nonconforming students are to be provided the same opportunities to participate in physical education as are all other students. Generally, students should be permitted to participate in physical education and sports in accordance with the student's gender identity. Participation in competitive athletic activities and sports will be resolved on a case-by-case basis. Schools should refer to the Vermont Principals' Association Activities/Athletics Policies: Article 1 Section 2.

Restroom and Locker Room Accessibility

The use of restrooms and locker rooms by transgender students requires schools to consider numerous factors, including, but not limited to: the transgender student's preference; protecting student privacy; maximizing social integration of the transgender student; minimizing stigmatization of the student; ensuring equal opportunity to participate; the student's age; and protecting the safety of the students involved.

⁷ Questions and Answers on Title IX and Single-Sex Elementary and Secondary Classes and Extracurricular Activities, USDE OCR (December 1, 2014)

A transgender student should not be required to use a locker room or restroom that conflicts with the student's gender identity.

Schools may consider including gender neutral restrooms into the design of new construction and/or building renovation.

Gender Segregation in Other Areas

As a general rule, in any other circumstances where students are separated by gender in school activities (i.e. overnight field trips), students should be permitted to participate in accordance with their gender identity. Activities that may involve the need for accommodations to address student privacy concerns will be addressed on a case-by-case basis considering the factors set forth above.

AOE gratefully acknowledges the assistance of Outright and GLAD in the creation of these best practices.

Legal References:

Title V, Section B, 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794 et seq.;
Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d;
Title IX of the Educational Amendments Act of 1972, 20 U.S.C. §§ 1681 et seq.;
Family Educational Rights and Privacy Act; 20 U.S.C. §1232g;
Public Accommodations Act, 9 V.S.A. §§4500 et seq.;
Education, Classifications and Definitions, 16 V.S.A. §11(26);(30)(A);(32);
Title IX Resource Guide, USDE OCR (April 2015);
<https://www2.ed.gov/about/offices/list/ocr/docs/dcl-title-ix-coordinators-guide-201504.pdf>
Questions and Answers on Title IX and Sexual Violence, USDE OCR (April 29, 2014); <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.
Questions and Answers on Title IX and Single-Sex Elementary and Secondary Classes and Extracurricular Activities, USDE OCR (December 1, 2014);
<http://www2.ed.gov/about/offices/list/ocr/docs/faqs-title-ix-single-sex-201412.pdf>

Sample resources from Vermont and other states:

Outright Vermont: www.outrightvt.org

The Vermont Human Rights Commission: <http://hrc.vermont.gov/>

GLAD: <http://www.glad.org/>

California:

California School Board Association, *Policy Brief: Providing a Safe, Nondiscriminatory School Environment for Transgender and Gender-Nonconforming Students*
<http://www.csba.org/~media/E68E16A652D34EADA2BFDCD9668B1C8F.ashx>

District of Columbia:

<http://dcps.dc.gov/publication/dcps-transgender-and-gender-non-conforming-policy-guidance>

New York:

http://www.p12.nysed.gov/dignityact/documents/Transg_GNCGuidanceFINAL.pdf

The Human Rights Campaign, in collaboration with the ACLU, the NEA, Genderspectrum and NCLR:

<http://hrc-assets.s3-website-us-east-1.amazonaws.com//files/assets/resources/Schools-In-Transition.pdf>

Recent Cases

Resolution Agreement of Downey Unified School District (Case No. 09-12-1095), USDE OCR (October 2014);

<http://www2.ed.gov/documents/press-releases/downey-school-district-letter.pdf>

<http://www2.ed.gov/documents/press-releases/downey-school-district-agreement.pdf>

Resolution Agreement of Arcadia Unified School District, U.S. Department of Justice (DOJ) (DOJ Case No. DJ 169-12C-70) and ED OCR (Case No. 09-12-2010)

<https://www.justice.gov/sites/default/files/crt/legacy/2013/07/26/arcadiaagree.pdf>

Frequently Asked Questions

1. What happens when a student transitions at school and requests that school personnel not share information with the parent(s)?

School personnel should analyze each situation using a student-centered or student-focused approach. If the student feels more supported and safe in transitioning at school and does not want this information shared with the parent (or guardian), school personnel should honor the student's request. Transgender and gender nonconforming students may not have talked to their families about their gender identity for reasons including safety concerns or a lack of acceptance. In order for a school to provide information legally required to be shared with parents, it may require the school to maintain two sets of records. The student may request that all correspondence between the school and the home use only the student's legal name and assigned sex. School personnel should discuss with the student first before discussing the student's gender identity with the student's parent or guardian and how written communication with the parent or guardian will refer to the student (preferred/chosen name and/or preferred pronouns or legal name).

2. How have other schools handled the privacy of transgender and gender nonconforming students?

In a case involving a student in Massachusetts, parents of a transgender male-to-female elementary school student requested that only the school principal and the school nurse be aware that the student was assigned the sex of male at birth. After a discussion with the school principal, the parents agreed that the student's teacher, the school secretary, and the district superintendent would also be informed. In this situation, the school principal kept the student's birth certificate in a separate, locked file that only the principal could access, and put a note in the student's other file saying that the principal had viewed the student's birth certificate. In another situation, where a biological male came to school after April vacation as a girl, the school principal and guidance counselor, in collaboration with the student and her parents, developed a plan for communicating information regarding the student's

transition to staff, parents, and students. The plan included who was going to say what to whom, and when the communication would take place.⁸

3. Will all bathrooms and locker rooms require modifications to accommodate transgender and gender nonconforming students?

Not necessarily. Any student may desire additional privacy in using a bathroom or locker room. A transgender or gender nonconforming student may request additional privacy within a locker room or other changing room. Similarly, other students may request additional privacy in changing clothes in a locker room or changing area used by a transgender or gender nonconforming student. These situations must be handled with concern for the privacy concerns of all involved. In using a student-centered approach, the transgender or gender nonconforming student may request a separate space, or may not. In any event, a transgender or gender nonconforming student must not be forced to use a separate space or use a space inconsistent with their asserted gender identity. Schools may provide a single stall with a door or curtain to provide privacy for any student who desires extra privacy within a common locker room or changing area (or bathroom).

⁸ *Guidance for Massachusetts Public Schools, Creating a Safe and Supportive School Environment: Nondiscrimination on the Basis of Gender Identity*, Massachusetts Department of Elementary and Secondary Education, 2012.